

Golden Gate National Recreation Area

Negotiated Rulemaking Process for Dog Management

Questions and Answers

What is rulemaking?

Rulemaking is the process used by federal agencies to formulate, amend, or repeal a regulation. A regulation generally is an authoritative requirement issued by departments and agencies that implements a statute and has the force of law.

Why is off-leash dog management an issue for rulemaking?

Changes in recent years, combined with several recent events, have underscored the need for a review of pet management – particularly dog walking - in GGNRA. Increased visitation to GGNRA, public concern about visitor and pet safety, park resource management issues involving wildlife and vegetation protection have combined to bring the issue of dog walking to the forefront of GGNRA's management concerns.

How did the decision to go to rulemaking occur?

A compilation of comments received in 2002 on an Advanced Notice of Proposed Rulemaking for Pet Management in GGNRA and other technical information, applicable federal laws, guidelines and policies were reviewed by a panel of senior agency officials from outside the park in 2002. The panel "concluded that off-leash dog walking in GGNRA may be appropriate in selected locations where resource impacts can be adequately mitigated and public safety incidents and public use conflicts can be appropriately managed."

GGNRA supported the panel's recommendation and forwarded it to Washington, where after review by National Park Service (NPS) and Department of the Interior officials, the NPS Director determined that the park should proceed with a rulemaking process to help formulate a new regulation for pet management at GGNRA. The GGNRA memo accompanying the panel's recommendation also noted that, "...the process of negotiated rulemaking would give us the greatest chance of achieving a successful conclusion to this management issue."

Will rulemaking apply to National Park Service areas other than GGNRA?

No. If a proposed rule is developed, it will apply only to GGNRA lands.

Why did GGNRA choose negotiated rulemaking (or "reg-neg"--short for regulatory negotiation)?

GGNRA wanted to use a process with the greatest chance to resolve the issues relating to dog management in the park. As the NPS Guide to the Federal Advisory Commission Act (FACA) notes, "The idea behind reg-neg committees is

that the traditional government agency process for developing agency regulations is too adversarial, and may lead to expensive and time consuming litigation. In the reg-neg process, those parties who will be significantly affected by a regulation are invited by the agency to participate in a committee to develop the regulation." This approach is also encouraged by NPS Director's Order 75A: Public Participation.

How is negotiated rulemaking different from regular rulemaking?

In a traditional *agency rulemaking* process, the agency generally produces a draft regulation in-house and asks for public comment. *Negotiated rulemaking* allows the agency and interest groups involved in the issue to collaborate in the rulemaking process to seek agreement on a proposed solution. At its best, negotiated rulemaking increases citizen participation, results in more creative solutions, eases implementation, increases compliance and reduces the prospect of future conflict and litigation.

Has negotiated rulemaking been used in other parks?

This process has been used by many other federal agencies, and has begun to be used by the NPS. Cape Cod National Seashore and Fire Island National Seashore have both used negotiated rulemaking processes. The 1995 Cape Cod process resulted in a consensus that was the basis of a revised regulation for off-road vehicle use that protects the federally listed Piping Plover and allows the existing use to continue. The Fire Island process concluded in August 2003; the areas of consensus reached by that reg-neg committee will be the basis of new regulations controlling motor vehicle use within the Seashore.

What are the steps in the reg-neg process?

The steps of the process are described in the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570).

Assessment Phase

The first phase of the negotiated rulemaking ("reg-neg") process, which was completed in 2004, determined that the process is in the public interest.

- GGNRA contracted with the U.S. Institute of Environmental Conflict Resolution (the Institute) to manage the process.
 - The Institute, is a federal program established by Congress to assist parties in resolving environmental, natural resource and public lands conflicts, is an impartial and neutral manager of the consensus-building activities in the reg-neg process.
- The Institute hired neutral facilitators, Greg Bourne and Mike Harty of the Center for Collaborative Policy, to conduct a Situation Assessment to determine whether the establishment of a reg-neg committee would be feasible and appropriate. During the Situation Assessment, the neutral facilitators:

- interviewed 45 persons from over 25 organizations who would be significantly affected by a proposed rule
- formally recommended to GGNRA that there is a reasonable likelihood that a reg-neg committee could be convened with a balanced representation of persons who could adequately represent the concerns of interest groups and who are willing to negotiate in good faith to reach a consensus on the proposed rule.
- identified proposed representatives who are willing and qualified to represent affected interest groups
- proposed a design for the reg-neg process based on information gathered during the assessment.

Establishing the Reg-Neg Committee

- Membership will be limited to 25 members unless the NPS determines that a greater number of members are necessary to achieve balanced membership.
- GGNRA will publish a Notice of Intent in the Federal Register to initiate establishment of a federally approved reg-neg committee.
- The notice will include:
 1. description of the subject and scope of the rule to be developed
 2. a list of the interests likely to be significantly affected by the rule
 3. a list of the persons proposed to represent those interests, and the proposed GGNRA representative(s)
 4. a proposed agenda and schedule for completing the committee work and target date for publication of a proposed rule
 5. a request for comments on the proposal to establish the committee and the proposed membership
 6. an explanation of how a person may apply, or nominate another, for committee membership
- If, after review of comments received from the Federal Register notice, it is confirmed that a reg-neg process is in the public interest and that all the affected interests are represented on the committee, a Notice of Establishment will be published in the Federal Register.
- The committee members will be formally appointed by the Secretary of the Interior, and the reg-neg committee will be established and administered in compliance with the Federal Advisory Committee Act (5 U.S.C. Appendix 2).

Conduct of the Committee

- GGNRA, through the Institute, will nominate a facilitator for the committee negotiations, subject to the approval of the committee.
- If the committee does not approve of the GGNRA nominee, the committee will select a facilitator by consensus.
- The facilitator will chair the meetings – which are open to the public - and impartially assist the committee members in conducting discussions and negotiations.

- The GGNRA representative on the committee will participate with the same rights and responsibilities as other committee members.
- During the meetings, committee members may educate each other on differing interests, gather additional technical information, consider options for how the rule might be written, consider trade-offs among the options and try to reach consensus on how the rule should be structured.
- The committee is approved for a set time period – no more than two years - after which the committee will terminate.
- If the committee reaches consensus on a proposed rule, the committee will send a report to NPS containing that proposed rule. If consensus on a rule is not reached, the committee may submit a report specifying any areas in which consensus was reached.

Drafting the Proposed Rule

- The NPS, to the maximum extent possible consistent with its legal obligations, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by GGNRA for notice and comment.
- After reviewing comments on the proposed rule, and incorporating any changes, GGNRA will publish the final rule in the Federal Register.

Is environmental compliance required for this process?

- The proposed rule will be reviewed under the National Environmental Policy Act (NEPA).
- The NEPA process, managed by NPS staff, will occur concurrent with the reg-neg process and will include public scoping, public comment period(s) and public meetings.

How long will the entire reg-neg process take?

The work of the committee is estimated to require eight months to complete. At the same time, the concurrent NEPA process will have begun preparing a Draft Environmental Impact Statement (DEIS). The DEIS will go out for public review at approximately the same time as a proposed rule will be published for public review and comment in the Federal Register. Following analysis of comments, a final EIS will be published and a final rule sent to Washington for approval. We anticipate that a final rule will be published by June 2007.

What happens if the reg-neg committee doesn't reach a consensus?

If consensus is not reached, GGNRA will draft the proposed regulation in an agency rulemaking and the public can comment on it. In that case it is likely that information gained from the negotiations would be used to inform the park's decision as to content of the draft rule.

Where can I get more information?

For information on the GGNRA reg-neg process and the decision to go to rulemaking, you can go to: www.nps.gov/goga/pets/regneg

You can also call our *Negotiated Rulemaking Telephone Information Line* (415-561-4728) for current information on the process.